also held that the burden of proving such authority is on the party alleging its existence—relying especially on *Hardesty* v. *Newby*, 28 Mo. 567, 75 Am. Dec. 137; *Hays* v. *Lynn*, 7 Watts, 525; *Commercial Nat'l. Bank* v. *Lincoln Fuel Co.*, 67 Ill. App. 166.

AGENCY—NOTICE—ADVERSE INTEREST.—Plaintiff corporation employed a bookkeeper, C, who had charge of its pass-book containing the account of the corporation with the defendant bank. C forged several checks in the name of the plaintiff, and obtained the money thereon. The plaintiff failed to examine the pass-book or discover the forgeries, and C extracted and detroyed the checks as they were returned, thus preventing discovery of the crime. The plaintiff brings action for the amount of the forged checks erroneously charged against it. *Held*, that the plaintiff can recover. *Kenneth Inv. Co.* v. *National Bank of the Republic* (1902), — Mo. —, 70 S. W. Rep. 173.

Among several other points, the court considered the question, (p. 178), whether the knowledge of the wrong, obtained by the plaintiff's agent in the course of his employment, *i. e.*, when the pass-book was returned to him, should be imputed to the principal. It was decided that, since the agent's interests were in conflict with those of his principal, knowledge obtained under these circumstances should not be imputed to the latter. The following authorities are cited: *Inerarity* v. *Bank*, 139 Mass, 332, 1 N. E. 282, 52 Am. Rep. 710; MECHEM, AGENCY, Sec. 723 and cases in note; *Weisser's Adm'rs.* v. *Denison*, 10 N. Y. 68, 61 Am. Dec. 731; *Welsh* v. *Bank*, 73 N. Y. 424, 29 Am. Rep. 175; *Gunster* v. *Power Co.*, 181 Pa. St. 327, 37 Atl. Rep. 550, 59 Am. St. Rep. 650; *Hardy* v. *Bank*, 51 Md. 562, 34 Am. Rep. 325; *Henry* v. *Allen*, 151 N. Y. 1, 45 N. E. 355, 36 L. R. A. 658; (in the L. R. A. numerous authorities are named in briefs.) See also, *Smith* v. *Boyd*, 162 Mo. 146, 62 S. W. 439; *Critten* v. *Chemical Nat'l. Bank*, 70 N. Y. 246, 60 App. Div. 241. A few of the earlier cases do not recognize this exception to the rule that notice to the agent is notice to the principal. *Bank of New Milford* v. *Town of New Milford*, 36 Conn. 93; *Willard* v. *Buckingham*, 36 Conn. 395; *Bank of the U. S.* v. *Davis*, 2 Hill, 451; *Bank* v. *Dunbar*, 118 Ill., 625; *Farmers Bank* v. *Kimball Milling Co.*, 1 S. Dak. 388, 36 Am. St. Rep. 739. In *Gunster* v. *Power Co.* (supra), it was held that where the wrong-doer was agent for both parties, the person for whom he was acting in the capacity of agent, when he committed the fraud, should suffer the loss.

CARRIERS—UNITED STATES MAIL—LIABILITY OF RAILROAD COMPANY FOR NEGLIGENT LOSS OF REGISTERED LETTER.—Through the negligence of defendant's servants, a registered letter, containing a large sum of money, was destroyed while being transmitted in the U. S. mail over defendants' road. The letter had been insured by the plaintiff company, and the company having paid the loss, brings this action against the railroad company to recover the amount so paid. On demurrer, *Held*, that plaintiff canno recover. *Boston Ins. Co.* v. *Chicago, R. I. & P. R. Co.* (1902), — Iowa, —, 92 N. W. Rep. 88.

The court held that there was no privity of contract between the plaintiff and the railway, and that defendant was neither a common nor a private carrier of mail, but a public officer or agent, so far as it dealt with the mails, and as such not liable for the negligence of its servants. The court cites, as much in point, *German State Bank* v. *Minn. St. P. & S. Ste. M. Ry. Co.*, 113 Fed. 414, recently affirmed by the circuit court of appeals (1902), 117 Fed. 434. It is believed that there are marked points of difference between the facts of the two cases. That a public office ever results from contract has been denied.

MECHEM ON PUBLIC OFFICERS, § 5, citing *Hall* v *Wisconsin*, 103 U. S. 5; *U. S.* v. *Maurice*, 2 Brock. (U. S. C. C,) 102, and numerous other cases. A contractor to carry the mails is not a public officer, and though he may be, in a certain sense, an agent of the government, those whom he employs in the execution of his contract are not government agents, and the contractor is liable to third persons for their negligence; *Sawyer* v. *Corse*, 17 Grat. (Va.) 230, 94 Am. Dec. 445; *Central R. R.* v. *Lampley*, 76 Ala. 357, 57 Am. Rep. 334; SHEARM. & REDF. NEG. (5th ed.) Sec. 118; WHARTON ON NEG. (2nd ed.) Sec. 296. Contra: *Conwell* v. *Voorheis*, 13 Ohio 523, 42 Am. Dec. 206; *Hutchins* v. *Brackett*, 22 N. H. 252, 53 Am. Dec. 248; *Foster* v. *Metts*, 55 Miss. 77, 30 Am. Rep. 504. The former is believed to be the better rule. See note to *Conwell* v. *Voorheis*, 42 Am. Dec. 208.

CORPORATION—CAPITAL STOCK—CONTRACTS TO REPURCHASE.—C, a corporation, sold certain of its capital stock to T, and executed a contemporaneous agreement to repurchase the same on the happening of a certain contingency. The contingency having happened, T made application to C to repurchase. C refused, and T brought action for damages for breach of contract. C defended on the ground that the contract was a secret agreement by the corporation to purchase its own shares and thus reduce its capital stock; that such an agreement is against public policy and void. *Held*, that unless prohibited by statute or charter, a corporation may purchase its own shares to a reasonable amount and for a legitimate purpose, the rights of creditors or stockholders not being impaired thereby. *Fremont Carriage Co.* v. *Thomsen* (1902), — Neb. —, 91 N. W. Rep. 376.

This is a case of first instance in Nebraska, and adds the sanction of one more court to what seems to be the weight of authority in the United States. The following cases and text writers sustain the view reached by the Nebraska court: *Bank* v. *Transportation Co.*, 18 Vt. 131; *Insurance Co.* v. *Swigert*, 135 Ill. 150; *Vent* v. *Spice Co.*, 64 Minn. 307; *Dock* v. *Cordage Co.*, 167 Pa. St. 370; *Trust Co.* v. *Abbott*, 162 Mass. 148; *Marvin* v. *Anderson*, 111 Wis. 387; *Hartridge* v. *Rockwell*, 1 R. M. Charlt. 260; *Cooper* v. *Frederick*, 9 Ala. 738; *Price* v. *Iron Mt. Co.* (1895), — Ky. —, 32 S. W. Rep. 267; *Blalock* v. *Kernersville*, 110 N. C. 99; *Howe* v. *Jones*, 21 Tex. App. 198. See also the following cases: *Vercontere* v. *Golden S. L. Co.*, 116 Cal. 410; *Lowe* v. *Threshing Co.*, 70 Fed. 646; *Chapman* v. *Iron C. R. Co.*, 62 N. J. L. 497; and WILGUS CASES ON CORPORATIONS 1045 and n.; THOMPSON'S COM. ON CORPORATIONS, Vol. 2, Sec. 2062; BEACH'S PRIV. CORPORATIONS, Vol. 2, Sec. 395; BOONE'S LAW OF CORP., Sec. 107; TAYLOR'S PRIVATE CORP., Sec. 135. The English rule is that a corporation cannot, without express charter or statutory authority, purchase its own stock. 7 ENG. AND AM. ENCY. OF LAW, 818; WILGUS' CASES ON CORP., 1051. The following American courts have reached the same conclusion as the English courts: *Herring* v. *Ruskin* (1899), — Tenn. Ch. App. —, 52 S. W. Rep. 327; *Coppin* v. *Greenless*, 38 Oh. St. 275; *Crandall* v. *Lincoln*, 52 Conn. 73; *Rawhide Co.* v. *Hill*, 72 Mo. App. 142; *Barto* v. *Nix*, 15 Wash. 563; *Ables* v. *Cockran*, 22 Kan. 405; *Currier* v. *Lebanon S. Co.*, 56 N. H. 262; *Barton* v. *Port Jackson*, 17 Barb. (N. Y.) 397. See also MORAWETZ PRIV. CORP., Vol, 1, Secs. 112 and 434; CLARK'S PRIV. CORP., Sec. 153; ELLIOTT'S PRIV. CORP., 333; SPELLING'S PRIV. CORP., Vol. 1, Sec. 168; THOMPSON'S COM. ON CORP., Vol. 2, Sec. 2054; WILGUS CASES ON CORP., 1048 and note. All American authorities seem to agree that a corporation may purchase its own stock to save a debt owing to the corporation. *City Bank* v. *Bruce*, 17 N. Y. 507; *Barto* v. *Nix*, 15 Wash., 563. If we recognize the fundamental principle upon which the right to exist as a corporation is granted, namely, the benefits resulting to the